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THE FRENCH SIDE OF THE NEWFOUNDLAND DIFFICULTY.

BY JEAN CHARLEMAGNE BRACQ, PROFESSOR OF ROMANCE LANGUAGES IN VASSAR COLLEGE.

NEWFOUNDLANDERS have produced a large body of literature upon the French Shore controversy in which they complain of enduring great wrongs that England does not redress; that the aggressions of the French pass the limits of human endurance; that French rights are a monstrous imposition; that these rights are in the way of their provincial prosperity, etc. It may be peremptorily answered to all this, that France and England did not sign the treaties of Utrecht and of Versailles, upon which present Anglo-French relations in Newfoundland rest, with any regard for Newfoundlanders, but for imperial ends. Such as they are, with their manifest imperfections, these treaties must remain, until revised, the charters that determine the relations of the two peoples in Newfoundland.

Much must be forgiven these writers for their way of presenting the question. They live in an island without archives and without libraries. None of their historical writers were able to read, in the original, the document which is the basis of the decision of the points at issue; and no competent historian has, as yet, grappled with the earlier history of the island. Its cartography alone would suffice to prove that for a long time it was under the flags of France and England, just as the island of Borneo now belongs to England and Holland. Basque and French names predominate in the early maps, because the French were first in developing the fisheries. So important were they for France that, with every loss of territory in the New World, she tenaciously clung to them. The rights reserved to her by the Treaty of

Utrecht, in 1713, were therefore not concessions of the British, but the continuance of old privileges.

To understand the terms of the Treaty of Utrecht, one must have some knowledge of the conditions of the island prior to this agreement. Great Britain looked upon Newfoundland not as an island to be worked for economic ends, but as a nursery of seamen which would so strengthen her naval population as to make her invincible at sea. Accordingly, the island was considered a great fishing station where, early in the spring, British fishermen went, and from which, late in the autumn, they returned to their English homes. Monopolies, and sometimes bounties, were given to English ship-owners who were to see that a large number of "green men" were trained for sea-faring life. There is no doubt that this course contributed to the naval greatness of England; hence the indomitable spirit with which it was pursued for so long a time. The greatest care was taken to prevent any of the fishermen from remaining on the island. The few who succeeded in evading the very stringent laws became the victims of the harshest measures. None were allowed to stay after the fishing season was over; they might not claim upon the coast so much as the scaffolding which they themselves had erected during the preceding year; nor could they settle or erect permanent structures within six miles of the shore. The policy of France was different. She not only permitted but even encouraged the permanent settlement of her subjects there. She was therefore a standing menace to the British policy. The Treaty of Utrecht involved the loss to the French of that part of the coast where they had permanent establishments, and also the loss of sovereignty over the parts of the island along which they had recognized fishery rights, though these rights were curtailed to harmonize with those of British fishermen. It was understood that the rights and practices of both would be similar. French fishermen were not allowed "to erect buildings" on their shore, neither were the British on theirs; they were not permitted to winter on the coast, neither were the British; they were not allowed to establish any permanent settlement, neither were the British. Fairness demanded that when the British removed these restraints from their own subjects they should have removed them also from the French.

The Treaty of Paris, in 1763, was the renewal, in so far as the French Shore was concerned, of the Treaty of Utrecht. At

that time, however, the British began to claim the right of fishing with the French. For that purpose they formed settlements on the coast reserved to France. This was a period of bitter controversies and quarrels between the two governments and the fishermen of both nations—a period interrupted by the American Revolution. The Treaty of Versailles, in 1783, again reasserted the terms of the Treaty of Utrecht. This time France, victorious, insisted upon the loyal interpretation of the first treaty, and she requested the removal of the settlements of Newfoundlanders which had been made on the French Shore. The King, for political reasons, complied with the request in a document now known as 'The Declaration, which reads as follows:

*“ Pour que les pêcheurs des deux nations ne fassent naître des querelles journalières Sa Majesté Britannique prendra les mesures les plus positives pour prévenir que ses sujets ne troublent en aucune manière, par leur concurrence, la pêche des Français pendant l'exercice temporaire qui leur est accordé sur les côtes de l'île de Terre-Neuve, et elle fera retirer, à cet effet, les établissements sédentaires qui y seront formés. Sa Majesté Britannique donnera des ordres pour que les pêcheurs français ne soient pas gênés dans la coupe des bois nécessaires pour la réparation de leurs échafaudages, cabanes et bâtiments de pêche.”**

“It is perfectly clear,” says Judge Prowse, the latest historian of Newfoundland, “that the English envoy virtually promised to give France exclusive rights from Cape John to Cape Ray.” It is perfectly clear, we would add, that the King of England recognized the exclusive rights of France upon the French Shore.

English and Newfoundland writers still claim that the fishery rights of France are “concurrent.” Let any one read the French text—that is, the only text, as the Declaration was not written in English—and he will find in it the obvious exclusion of British fishermen. Were the rights of the French “concurrent” the Declaration is meaningless and inexplicable. If, after the controversies and quarrels that had taken place, the fishery was to be carried on as it had been after the Treaty of Paris, what was the

*“In order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French during the temporary exercise of it which is granted to them upon the coast of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for repairs of the scaffolds, huts, and fishing vessels.”

use of the Declaration? Then, again, if those rights were "concurrent," they would have been so stated in the Treaty of Versailles, as they had been in the American Treaty a few months before. They would have been so stated in the Treaty of 1802, and in that of 1814 and 1815, as they were again in the Anglo-American Treaty of 1818. Had such "concurrent" rights existed after the former controversies, it is not reasonable to believe that they would have been mentioned in the American treaties, the first and last of a series of six treaties, and omitted in the second, third, fourth and fifth of the same series with France. Again, in the Anglo-American Treaty of 1782, the Americans have "the liberty to take fish of every kind on such parts of the coast of Newfoundland as British fishermen shall use." The expression "such parts of the coast" shows that the British fishermen did not fish on all parts of the coast, and the parts reserved are those belonging to France. A statement by Fox in the British Parliament is conclusive on this point. As he was opposing the Anglo-American Treaty, he said, "We have granted to the Americans the privilege of fishing on the only part of Newfoundland which is left to us by our cession to France."

This exclusion of the British is also demonstrated by an Act passed in 1787 forbidding British fishermen to fish on the French Shore; by an Act in 1788 empowering the King and his Officers "to remove or cause to be removed any stages, flakes, train vats, or other work whatever, for the purpose to carry on fishery erected by His Majesty's subjects" on the French Shore; by an Act passed which excluded electoral franchise from extending over any portion of the French Shore; and by instructions to Governors and by their proclamations. That Newfoundlanders were excluded from fishing on this shore is equally evident from contemporary statements of Newfoundlanders. The following is from a letter addressed to Lord Bathurst:

"In the first place, my Lord, the garden, if I may be allowed to use the term, of Newfoundland fishing ground, extending from Cape Raye to Cape John, was given up to the French. This part of the coast had been upward of twenty years the principal resort of British fishermen, who had expended large sums in making the requisite erections; these they were compelled to abandon to their rivals without receiving the slightest remuneration; and a great portion of our fishermen have ever since been obliged to sail two or three hundred miles, passing the French Shore, to fish on the coast of Laborador."

The exclusive rights of France are sufficiently demonstrated by the organized efforts to overthrow them. Passing over in silence the performance of Albert Gallatin, which was a plea *pro domo sua* and which led to the Treaty of 1818, we find toward the eighteen-thirties an organized effort in St. John's to invade French fisheries. In 1829, the Chamber of Commerce of that city took steps in that direction, but the Governor warned them that he could not support them. In 1830, the matter was brought before the British Parliament. The discussions assume that the French are in the exclusive possession of the fisheries of the treaty-shore. During the following year, a vessel was fitted out in England to go to the French Shore as a test case. The French ordered it out, and no diplomatic protest was entered. In the Parliamentary debates which followed the course of France was approved by the Government. French fisheries were not interrupted by the participation of any other nationality. So strong was the movement, and so great the interests by which it was backed, that the English authorities were compelled to refer the matter to the Law Officers of the Crown. In 1835, that is after over fifty years of exclusive fishery by the French, their exclusive enjoyment of the fisheries was confirmed by the following decision of these high British legal authorities:

"We are of opinion, that the subjects of France have the exclusive right of fishery on the part of the coast of Newfoundland specified in Article V. of the Definitive Treaty, signed at Versailles on the 3rd September, 1783."

Englishmen often refer with legitimate pride to the independence of their judiciary. While their record in this respect is admirable, it would be erroneous to assert that their legal experts and judges have never been affected by popular feelings, especially when the prerogatives of foreigners were at stake. So great was the protest of interested parties at this time, and so well was the agitation organized, that the case of the French Shore was recommitted to the same Officers. The decision was the same as the first, only it was stated in such a way as to yield, at least in the form, something to the opposition. It runs as follows:

"If there were really good room, within the limits of the district in question, for fishermen of both nations to fish without interfering with each other, then we do not think this country would be bound to prevent her subjects from fishing there. It appears, however, from the Re-

port of Admiral Sir P. Halkett that this is barely practicable; and we are of opinion that, according to the true construction of the Treaty and Declaration, British subjects are precluded from fishing, if they thereby cause any interruption to the French fishery."

Newfoundlanders, usually unscrupulous in their use of texts, distorted this important document. They separated from the rest the words, "If there were really good room within the limits of the district in question for fishermen of both nations to fish without interfering with each other, then we do not think this country would be bound to prevent her subjects from fishing there." But the Law Officers, not wishing to leave the decision as to "good room" for the "fishermen of both nations" to any one else, decided themselves, basing their opinion upon the report of Sir P. Halkett, that this is not practicable, and that therefore the French are entitled to the exclusive rights. Newfoundlanders overlooked the real character of this decision and invaded French fisheries. In order to keep within the letter of the first part of the Second Decision, they were to retire as soon as the French intimated that they were in their way. When one remembers the kind of men that fishermen generally are,—no matter what their nationality—it must be clear that it was impossible to avoid the constant quarrels and feuds which the Declaration was intended to prevent. There can be no better demonstration *ab absurdo* of the untenableness of the interpretation of Newfoundlanders than the intolerable situation which they have created there. No British statesman would ever have signed, no British Parliament would ever have ratified and renewed three times, an international agreement to be thus interpreted.

Another, though a subordinate, point in the controversy is the nature of the fishery recognized in the Treaty. It is defined as "*piscaturam exercere*"—the exact equivalent of the English of the times, "to carry on fishery," and of the French "*faire la pêche*." This French term is also the one used in the Declaration. The sense of "*piscaturam*" is to be established by the historical practice before and after the Treaty of Utrecht. We have abundant proof that the French caught herring, salmon and other fish—that in those days and upon those unpopulated and worthless shores fishermen enjoyed unlimited freedom. There were then none of our contemporary hair-splitting controversies, and fishermen caught anything which they deemed profitable. The terms

of the Treaty allow the taking of any creature living in water—whales, lobster, etc. Newfoundlanders, instead of using a correct translation, give as the equivalent of “*piscaturam exercere*,” “to catch fish.” It happens that the term “fish,” in Newfoundland English, means “cod-fish.” There is on record, in the island, the judicial decision that a salmon is not a fish. Such being the case, they naturally concluded that the French are not allowed to catch lobsters. The words used in the Treaty, “to carry on fishery,” must be construed, in reference to the lobster, in the light of the practice of fishery as conducted by the nations. Now, the lobster is included in the piscatorial nomenclature of the Newfoundland Fisheries Commission. The United States Fish Commission includes also the lobster among the sea foods to be prepared for fish markets. Even though the term of the Treaty were “to catch fish,” the position of Newfoundlanders would still be untenable. In the eighteenth century, except in strict scientific parlance, the lobster was considered a fish. The Catholic Church in ember-days uses it as a fish, and even in English law terms abound which refer to the lobster as a fish. Right as their claim was, the French would not have made any great opposition to this departure of Newfoundlanders had it not been a pretext to invade still further their prerogatives. In dealing with the “lobster factories,” which have been one of the grievances, one must remember that everything in Newfoundland parlance is peculiar. A factory to us suggests a great industrial establishment, with machinery and important buildings; while the French “factories,” so-called, are rough sheds, with a few movable utensils for cooking and canning lobsters. A fair and generous interpretation of the Treaty would tolerate them, but no possible interpretation can be found justifying the building of a score or more lobster factories which Newfoundlanders have erected. By the Declaration, the King of England asserts that he will remove the settlements “*qui y seront formés*”—he will not only remove those existing already, but also any formed there in the future.

These conclusions may seem hard for Newfoundlanders, but, as already said, the Treaty of Utrecht treated them as a neglectable quantity, and the Declaration has no greater consideration for them. Since that time, the population has increased from four or five thousand to over two hundred thousand. It has taken the helm of the political life of the island into its hands. Some of

the writers of this island now tell of French aggressions on their territories. This ought not to mislead intelligent readers. Which is more likely, that a small body of Frenchmen, who are there for a few months of each year, will encroach upon the privileges of the natives, or that the growing population of natives will encroach upon the rights of these few Frenchmen and try to push them out? As a matter of record it is true that upon this French Shore, which was to remain unsettled, the number of Newfoundlanders is twice or three times as large as the entire population of the island at the time of the Treaty of Utrecht. When Newfoundlanders accuse France of "aggression," and when Mr. Chamberlain speaks of her "pin-prick policy," they fail to grasp the long series of wrongs which the "wicked French" have endured at the hands of the "good British." After the Treaty of Utrecht, the English took advantage of the differences of cartographers in reference to Pointe Riche to deprive the French of nearly one-third of their Treaty Shore. The map used by the envoys at Utrecht, like many other maps of the time, had Pointe Riche where Cape Ray was supposed to be, and Cape Ray was meant in the Treaty. Even when this very map was found, the British declined to surrender the part of the coast unjustly taken. After the Treaty of Paris, the British forced upon the French the participation of British fishermen in the treaty-shore fisheries. The British claimed also the right to exercise coercive jurisdiction over the French fisheries—a claim which Lord Salisbury admitted, in a similar case in the Anglo-American controversy of 1880, to be untenable. They disturbed French fishermen by the harsh and vexatious measures of Governor Palliser. After taking from the Americans the fishery rights granted in 1782, the British accorded them rights, which did not belong to Britain, to fish along the French Shore. After the decisions of the Law Officers, the British allowed Newfoundlanders to invade French fisheries in manifest violation of those decisions. The British allowed Newfoundlanders to abuse the French on the occasions of the lobster controversies, of the Bait Act and of the burning of some of their establishments. The enumeration of these grievances of the French is useless in so far as the general issue is concerned, but it simply shows either the ignorance or bad faith of those who, in this great island, pose as the victims of their Gallic antagonists. It may be added that England has often had

more than her share of abuse from this island. For her uniform defence of Newfoundlanders, when they could possibly be defended, she deserves something better from them than abuse.

The writers of Newfoundland have been quite eloquent in speaking of the obstacles which the French place in the way of the development of the island. The question, however, may be asked, Why have Newfoundlanders not developed the parts of the island where the French are not? As to agriculture, their poor soil and cold climate are not favorable to it. Their crops scarcely ripen. Their land is so unfertile that, whenever fire has passed, it takes a long time for vegetation to spring up. When one remembers that this island is the oldest of England's colonies, and that its farm produce is still insignificant, one can have but little faith in its agricultural possibilities. The same thing so far has been true of its forestry. While France by her treaties has exclusive rights there, she has endeavored to use them in such a way as to make them stand as little as possible in the way of the progress of the island. She has exercised a toleration whereby over twelve thousand Newfoundlanders settled upon the treaty-shore. She has shown herself ready to make important concessions. By the Ford-Pennell Convention in 1884 an agreement was made between England and France giving Newfoundlanders the absolute and unrestrained use of the straight shores, making provisions for transportation and the general commercial interests of the coast. France was to keep the exclusive rights of fishing in the bays. This was a great concession on the part of France, but the Government of Newfoundland in favor of this arrangement was overthrown and the Ford-Pennell Convention was rejected with it. The reason for this, as given to the writer by representative citizens of the island, is that the bays are the best fishing-places. They value the fisheries—and rightly too—far more than the distant mirage of the great agricultural, mining and forestal wealth of the French Shore.

Newfoundland writers have laid stress upon the insignificant value of the French Shore to France and its great importance to them. When the matter of compensation is mentioned, they almost suggest that France's treaty rights do not deserve any. To this it may be answered that, if the fishery rights on the French Shore have so much potential utility to Newfoundlanders, then they have so much value. Political economy has never measured

the price of an article by its utility to the seller. If then these rights are so important for them, let them offer an adequate compensation. After the Treaty of Washington, authorized by the compensation clause, Newfoundlanders claimed from \$120,000 to \$160,000 a year from the United States for fishery privileges in Newfoundland. Now, if the United States had rights similar to those of the French upon the "Anglo-French-American Shore,"* as Mr. McGrath would have it, why did Newfoundlanders exact one million of dollars from the United States? The money was paid. When the award was announced in 1877, the Hon. A. V. Harvey, one of the most honored citizens of St. John's, found the sum too small. He said:

"There would hardly be a disputation that the fisheries between Cape Ray and Cape John were of more worth than the combined fisheries of the neighboring colonies, and if upon that principle the award had been decided, we should have received two millions five hundred thousand dollars."

In this instance the British were making the Americans pay for rights which belonged to the Americans, so far as Great Britain was concerned, by the treaty of 1818. The strange part of it is that she granted rights where she had none; and then she allowed her subjects to ask compensation years after for the full exercise of the rights she had granted. The importance of this act of international duplicity is that, when it was perpetrated, Newfoundlanders freely and frankly expressed their minds upon the real financial value of French fishery rights.

France has all along borne the unjust and unfair attacks of Newfoundlanders in a tolerably good spirit—though not that of turning the other cheek. The speeches in the British Parliament have abundantly recognized her patience in dealing with this question. She has a large population which depends upon her fisheries. M. Louis Lègasse, the delegate of St. Pierre Island to the Superior Council of French Colonies, stated in a report to the Minister, in Paris, that over 40,000 persons in France depend upon the Newfoundland fisheries. It is true that only a part of the fishermen are on the French Shore, but the fisheries cannot be disturbed in any part without disturbing the whole. Setting aside their economic importance and the little bit of historic

* See article by Mr. McGrath in the *NORTH AMERICAN REVIEW* for January, 1902.

sentiment which clusters about them, they perform a national function of transcendent importance. They encourage and keep up seafaring life among the populations of the western coast of France. They furnish able, well-trained men, with sea instincts of many generations in the blood, for naval service. Therefore, regardless of economic importance, these treaty rights and their use make for the naval strength of the nation.

That the Treaty of Utrecht ought to be revised is generally admitted, but it ought to be done by men capable of gauging the old conditions and of giving corresponding values in the circumstances of our own times. France would doubtless be willing to make such a revision, or to sell her rights for an adequate compensation, but she would resent an attempt at coercion.

If the claims of France are wrong, then why should not Newfoundlanders consent to arbitrate the points at issue? Why not allow an independent court of arbitration, after the most sweeping search for evidence and the collection of all the data which bear upon the whole matter, to decide upon the contention? Newfoundlanders wish to be judges when they are only a party in the controversy. Judge Prowse says: "Most Newfoundlanders are afraid of arbitration; England is always on the losing side." The words of the Judge mean that Newfoundlanders do not dare to present their case before a competent court. Furthermore, they contain the most cruel insult which could be thrust in the face of England. Were it true that England, when she appears before the distinguished European judges selected to arbitrate, "is always on the losing side," it would seem that her contentions must always be wrong. There is not a shadow of doubt that, in this case, were England to voice the claims on the French Shore as her subjects do, she would be "on the losing side." It would be better to recognize now the evident exclusive rights of France. M. Delcassé has told the writer that the Foreign Office no longer denies them. Were it otherwise, it would be worth while for Great Britain to refer the interpretation of the treaties to the Court of Arbitration at The Hague, for then she could face France or her subjects in the island with the greater moral power.

JEAN CHARLEMAGNE BRACQ.